(2)

Supreme Court, U.S.
FILED
NOV 30 1993
OFFICE OF THE CLERK

No. 93-770

In The

Supreme Court of the United States

October Term, 1993

JIM EDENSO,

Petitioner,

vs.

HAIDA CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

CABOT CHRISTIANSON
Counsel of Record
BUNDY & CHRISTIANSON
Attorneys for Respondent
911 West 8th Avenue, Suite 302
Anchorage, Alaska 99501
(907) 258-6016

4518
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
Haida Corporation's Statement of the Case	1
Reasons for Denying the Writ	2
Conclusion	5

TABLE OF CITATIONS

Cases Cited:

Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975)	3
Chambers v. NASCO, 894 F.2d 696 (5th Cir. 1990)	4
Chambers v. NASCO, 111 S. Ct. 2123 (1991)	4
Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987)	3
Hanna v. Plummer, 380 U.S. 461 (1965)	4
Pennsylvania v. Del. Valley Citizens Council, 478 U.S. 546 (1986)	3

Statutes Cited:

28 U.S.C. § 157(b)(1)	4
28 U.S.C. § 157(b)(2)(B)	4

Contents

	Page
28 U.S.C. § 1334(c)(2)	3
30 U.S.C. § 185	3
42 U.S.C. § 4321	3
42 U.S.C. § 7401, *et seq.*	3
43 U.S.C. § 1601 *et seq.*	2
Rules Cited:	
Alaska Rule of Civil Procedure 82	1, 2
Supreme Court Rule 29.1	2

HAIDA CORPORATION'S[1] STATEMENT OF THE CASE

Jim Edenso's Statement of the Case is generally accurate, but is incomplete in one respect. In Edenso's trial brief, filed immediately before the commencement of the bankruptcy court trial, Edenso outlined his claims. Part of his claim is $19,375.35 of Alaska Rule of Civil Procedure 82 ("Rule 82") attorney fees. His trial brief opens with the following summary of his claim:

> Creditor JIM EDENSO, is entitled to be paid the following:
>
> 1. 7/03/84 corrected invoice (original, dated June 12, 1984) $103,316.17
>
> 2. Interest at ten and one-half percent (10.5%) from July 3, 1984 to July 19, 1988, the effective date of HC Plan 43,868.34
>
> 3. Interest at six percent (6%) from July 19, 1988 to January 10, 1992. Per diem interest runs at $16.98 21,569.02
>
> Subtotal $168,753.53
>
> **4. Civil Rule 82 contested attorney's fees on $168,753.53 $19,375.35**
>
> TOTAL $188,128.88

1. Haida Corporation is a village corporation for the village of Hydaburg, (Cont'd)

It was only after Edenso lost at trial that he took the position that an award of Rule 82 attorney fees to the prevailing party in this dispute is improper.

REASONS FOR DENYING THE WRIT

The courts below applied Alaska's Rule of Civil Procedure 82[2] to a dispute decided by a bankruptcy court entirely under Alaska state law. No other state in the union has a comparable rule of civil

---

(Cont'd)
Alaska organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* Haida Corporation has no corporate parent and no nonwholly owned subsidiaries. Supreme Court Rule 29.1.

2. Rule 82(a)(1), as then in effect, provided:

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

	Judgment and, if Awarded, Prejudgment Interest	Contested With Trial	Contested Without Trial	Non-Contested
First	$25,000	20%	18%	10%
Next	$75,000	10%	8%	3%
Next	$400,000	10%	6%	2%
Over	$500,000	10%	2%	1%

Should no recovery be had, attorney's fees may be fixed by the court in its discretion in a reasonable amount.

procedure[3]. The issue presented herein can therefore arise only in Alaska, and has no federal significance.

Petitioner argued that *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975); *Pennsylvania v. Del. Valley Citizens Council*, 478 U.S. 546 (1986); *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987) supports his position. Taken together, those cases stand for the proposition that in a case decided under federal law, federal courts may not award attorney fees to the prevailing party unless expressly authorized by federal statute or under circumstances not relevant to the case at bar (bad faith, contempt of court, and recovery of a common fund). *Alyeska*, 421 U.S. at 257-259.

Those cases were all brought under federal law. *Alyeska* was brought under the Mineral Leasing Act of 1920, 30 U.S.C. § 185, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321. *Pennsylvania* was brought under the Clean Air Act, 42 U.S.C. § 7401, *et seq.* *Crawford Fitting* was brought under federal antitrust laws.

The instant dispute, in contrast, was decided entirely under Alaska law. All the events giving rise to the dispute occurred prior to Haida Corporation's Chapter 11 filing. The only reason the dispute was decided by the bankruptcy court instead of a state court was that Petitioner had not filed a state court action by the time of the petition. 28 U.S.C. § 1334(c)(2).

This Court has consistently recognized that when a federal court decides a case under state law, the state law rule granting or denying attorney fees will apply. For example, after setting forth, in *Alyeska*, the general federal rule that absent statutory authorization, attorney fees are not awarded in federal court, this

---

3. Nor, to respondent's knowledge, does any other state have any other rule of general application which grants attorney fees to the prevailing party.

Court stated in footnote 31:

> A very different situation is presented when a federal court sits in a diversity case. "[I]n an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney's fees or giving a right thereto, which reflects a substantial policy of the state, should be followed." 6 J. Moore, Federal Practice Para. 54.77 [2], pp. 1712-1713 (2d ed. 1974) . . .

Petitioner attempts to wriggle out of this footnote 31 by arguing that a federal rule of decision applies to this case because the bankruptcy court had jurisdiction to hear the case.[4] However, this jurisdictional grant is no more a "federal rule of decision" than is a grant of diversity jurisdiction. The same considerations that led this Court to use the state law rule for attorney fees where substantive state law applies in a diversity case,[5] should lead this Court to conclude that the state law rule for attorney fees applies where substantive state law applies in a bankruptcy case.

---

4. 28 U.S.C. § 157(b)(1) gives bankruptcy courts jurisdiction to hear core proceedings. Under 28 U.S.C. § 157(b)(2)(B), core proceedings include claims determinations.

5. To wit, "discouragement of forum shopping and avoidance of the inequitable administration of the laws." *Hanna v. Plummer*, 380 U.S. 461, 468 (1965), quoted in *Chambers v. NASCO*, 111 S. Ct. 2123, 2137 (1991). "*Erie* [*v. Thompkins*, 304 U.S. 64 (1938)] guaranties a litigant that if he takes his state law cause of action to federal court, and abides by the rules of that court, the result in his case will be the same as if he had brought it in state court." *Chambers v. NASCO*, 894 F.2d 696, 706 (5th Cir. 1990), quoted approvingly in *Chambers v. NASCO*, 111 U.S. at 2137.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

CABOT CHRISTIANSON
BUNDY & CHRISTIANSON
Attorneys for Respondent

November 24, 1992